IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.281 of 2002.

Date of decision: 14.12.2007

Himachal Khadi Mandal, Kangra ….Petitioner.

-Versus-

Uttam Chand ….Respondent

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? No

For the Petitioner: Mr.K.D.Sood, Advocate.

For Respondent: Mr.R.K.Gautam, Senior Advocate with Mr.J.R.Poswal, Advocate.

Deepak Gupta, J.

This Revision Petition is directed against the order of the learned Appellate Authority, Kangra at Dharamshala in Rent Appeal No.4-K/2001 decided on 29.5.2002 whereby he has affirmed the order of eviction passed against the tenant by the learned Rent Controller(1), Kangra in Rent Petition No.1 of 2000 decided on 28.9.2001.

I have heard Sh.K.D.Sood, learned counsel for the petitioner-tenant and Sh.R.K.Gautam, learned senior counsel for the respondent-landlord.

The admitted facts are that the petitioner is a tenant in a non-residential shop in Ward No.7, Main Bazaar, Kangra. The landlord sought the eviction of the petitioner on various grounds including the

ground that the premises are bonafide required for re-construction and that the building has become dilapidated and unfit.

The learned Rent Controller framed the following issues:

"1.Whether the respondent is in arrear of rent from 11.6.1999 to 11.1.2000? If so its effect? OPP

2.Whether the premises are bonafide required for re-construction as alleged?OPP

3.Whether the upper storey has been burnt down and the building has developed cracks and is roofless. If so its effect as alleged?OPP

4.Whether the walls of two sides have fallen down of the upper storey?OPP

5.Whether the glazes of front side have burnt and are not in existence?OPP

6.Whether the sheets used in the roof have been burnt down if so, its effect?OPP

7.Whether the petitioner has sufficient funds for carrying on the rebuilding work on the site sanctioned plan?OPP

8.Whether the petition is not legally and factually maintainable?OPR

9.Whether the petition is barred under Order 2 Rule 2 of CPC? OPR.

10.Whether the petition is barred due to the earlier petition and the decision on that petition is a bar to the present petition?OPR

11.Whether the petition is malafide and is based on false and frivolous allegations?OPR.

12.Relief."

Issues 2 to 7 are relevant for our purposes since the rent has been paid by the petitioner and the other issues were decided against the landlord. Issues 2 to 7 in fact have not been framed properly and so many issues were not required to be framed. The only question which arises for determination is whether the landlord requires the premises bonafide for reconstruction or not.

The landlord has proved on record that the disputed premises consists of a double storeyed shop situated in main bazaar, Kangra and that it was built somewhere around 1942. According to the Landlord a fire broke out on 28.9.1999 and the roof, doors, glazed windows of the upper storey were burnt down. The wall also fell down and CGI seats of the roof fell on the first floor. Consequently,

the lower storey was also damaged. The landlord has submitted that he wants to reconstruct the building which has become unsafe and wants to raise a pucca concrete construction.

In support of his plea the landlord has examined PW-4 Mahal Chand who has proved that the fire took place and the damage to the building of the landlord was assessed at Rs.35,000/- and Rs.10,500/- has been paid to the landlord by the State Government as a relief. The sanction plan for construction of the new building has also been got approved on record. The landlord has also proved that there are sufficient funds in his possession. The bank official examined as PW-2 has proved that there were Rs.10 lakhs lying in the FDRs of the landlord and his wife in the bank. The tenant has not denied the fire and has also not seriously disputed that major portion of the upper floor was damaged.

Both the Courts below on the appreciation of the evidence led before them have come to the conclusion that the premises are required bonafide by the landlord for reconstruction. By now the law is well settled that the bonafide requirement of the landlord must be judged keeping in view his own requirements. Admittedly the building in question is an old building. This building has partially burnt down. The landlord wants to make best use of his land and building by raising a new concrete structure on the building which is not possible without the vacation of the premises. The landlord has proved that he and his wife have more than Rs.10 lakhs in fixed deposits. They can raise loans for further construction. The building is an old kacha building which has already been damaged by a fire.

Therefore, the finds of both the Courts below that the landlord is in bonafide need of the building for reconstruction is absolutely correct and these concurrent findings of fact calls for no interference in revisional proceedings.

There is no merit in the petition which is accordingly rejected.

December 14, 2007 **(Deepak Gupta),**
PV **Judge**